the decision of Sidgreaves C.J. and hold that this Mohammedan girl having attained puberty, had no guardian, and therefore she was not taken out of the keeping of the lawful guardian and on this ground I allow the appeal.

It is not necessary to consider separately the fourth ground of appeal, that this girl was not a minor, but I draw attention to the distinction which Thornton J. pointed out between the age of puberty and the age of discretion. A Mohammedan may be a minor for one purpose, such as for the purpose of contracting or suing, but not for others, such as marriage and guardianship. Whether the law should not be amended is for others to consider.

I may mention that attention was drawn to the word 'minor' in the marginal notes of sections 372 and 373. A marginal note the Commissioner preparing Revised Editions of the laws has had power to supply or alter (Ordinance 25 of 1925 section 3 (3), Ordinance 38 of 1935 section 4 (4)) cannot safely be combined with the text of the section as constituting a definition. 'Minor' is a short, if not perfectly accurate, word used to replace "person under the age of twenty-one years." It is most noticeable that 'minor' is not used in the text. Sections 372 and 373 create offences against persons of all races and religions who are under the age of twenty-one years. Had the word 'minor' been used we would have the same difficulty as in occasioned in section 361.

I observe that 'minor' occurs in the marginal notes to sections 372 and 373 of the F.M.S. Penal Code where by reason of the Age of Majority Enactment a Mohammedan who has completed the age of eighteen years is not a minor.

If section 361 was not intended to recognize different ages at which minority ceases according to the usages and customs of different races and religions, one would expect it to use the word 'person' instead of the word 'minor'.

The appeal is allowed.

Appeal allowed.

F. M. S. REPORTS.

T. S. B. MANIAM vs. PUBLIC PROSECUTOR.

[Miscellaneous Crim. Application (Horne, J.)
April 19, 1941]

Road Traffic Enactment, 1937 Section 53 (1) and (2) — Duty of prosecution to prove that there was no policy in force.

The accused pleaded guilty and was convicted on the following charges (1) failing to display a distinguishing mark (the learner's 'L') contrary to Rule 13 (4) (iii) of the Motor Vehicles (Driving Licences) Rules 1937 (2) using a motor vehicle while holding a provisional licence without the supervision of a licence holder contrary to Rule 13 (4) (i) of the Motor Vehicles (Driving Licences) Rules 1937. The accused was also charged for using a motor vehicle without there being in force in relation to himself as user a policy of insurance as required by the Road Traffic Enactment 1937 contrary to Section 51 (1) and (2) of that Enactment. To this charge the accused pleaded guilty and he was convicted. On these convictions being reported to the Transport Board, the Board brought the matter to the notice of the Court objecting that the conviction on the third charge was wrong in law. It was apparently considered in the Magistrate's Court that the breaches of rules comprised in the first two charges would enable the insurers at their option to avoid the policy issued under the Enactment and that therefore at the time of the offence there was no policy in force.

Held, that it must be proved beyond reasonable doubt that there was no policy in force and that until the policy has in fact been avoided by the insurer no Magistrate can safely convict solely on an admission of the breach of condition of the licence.

Cases referred to:—

(1) Smith's Case (1879) 11 Ch. D. 579

Draper for the Public Prosecutor.

Horne, J.—The applicant pleaded guilty in the Seremban Magistrate's Court to three charges:—

(1) failing to display a distinguishing mark (the learner's "L") contrary to Rule 13 (4) (iii) of the Motor Vehicles (Driving Licences) Rules 1937;

(2) using a motor vehicle while holding a provisional licence without the supervision of a licence holder contrary to Rule 13 (4) (i) of the Motor Vehicles (Driving Licences) Rules 1937;

(3) using a motor vehicle without there being in force in relation to himself as user a policy of insurance as required by the Road Traffic Enactment 1937 contrary to section 51 (1) and (2) of that Enactment.

He was fined (1) $5/- (2) $10/- and (3) $25/- and disqualified from holding a licence for 12 months.

At the time of these convictions he had a driving licence limited to vehicles of 12 H.P. and a provisional licence for vehicles not exceeding 2½ tons.

Apparently it was considered that the breaches of rules comprised in the first two charges will enable the insurers at their option to avoid the policy issued under the Enactment and therefore at the time of the offence there is no policy in force.

These convictions were reported in due course to the Transport Board. The Transport Board brought the matter to the notice of the Court objecting that the conviction on the third charge was wrong in law. The applicant also applied for revision.

The principal ground for that objection, which has now been argued before me by Mr. Draper, is that a provisional licence is a driving licence within section 2 of the Road Enactment and that as the applicant was driving with the policy holder's permission and held at the time a "licence to drive such vehicle" the insurance could not be avoided by the insurers.

The certificate of insurance in question was in common form; the material part is paragraph 5: Persons or classes of persons entitled to drive.... (b) Any person who is driving on the policy holder's order or with his permission, provided that the person driving holds a licence to drive such vehicle or has held and is not disqualified by order of a Court of law or by reason of any Enactment or regulation in that behalf from holding or obtaining such a licence.

The argument to the contrary is that as the person driving held a provisional licence which subjects him to the conditions of (i) having a distinguishing mark on the vehicle, and (ii) having the supervision of the holder of a licence other than a provisional licence, and having broken both these conditions he did not "hold a licence to drive such vehicle."

In one sense a provisional licence is a licence to drive such vehicle, and the Enactment does not declare that a breach of its conditions results in forfeiture or avoidance. Before the provisional licence can be suspended even, the holder must be convicted of an offence warranting suspension; and all that the policy requires is that the person driving holds a licence to drive such vehicle i.e. a document evidencing that permission has been given to him. On the other hand a licence is the authorization of an act which would otherwise be illegal; and if the person driving holds a provisional licence and is acting in breach of its conditions he is doing something he has no legal right to do; and an insurance policy which covers the policy holder, while he is permitting his provisional licenced driver to drive without supervision may be said to be encouraging acts dangerous to the public at large, in breach of statutory provisions designed to prevent them, and is thus contrary to public policy.

In my opinion the argument pro and con on this basis does not provide a satisfactory answer to the question whether a person (e.g. the applicant) has been rightly or wrongly convicted of the offence under section 51 of using a motor vehicle without there being in force in relation to the user of the vehicle by that person such a policy as complies with the Enactment.

It is for the prosecution to prove that the policy was not in fact in force at the time of the user alleged and all the prosecution do is to ask the Magistrate to construe an offence out of the terms of the insurance certificate and the conditions of the licence. This method lacks the certainty demanded by law when a penalty is to be imposed upon the subject. It must be proved beyond reasonable doubt that there was no policy in force and until the policy has in fact been avoided by the insurer no Magistrate can safely convict solely on an admission of the breach of condition of the licence.

Section 15 (2) of the Enactment provides that a holder of a provisional licence who fails to comply with the conditions to which it is granted shall be guilty of an offence against the Enactment and thus renders such holder liable to the penalties under section 118 and on conviction he may be disqualified under section 20 (1). Apparently section 51 has been resorted to in order to obtain an order for disqualification. I think it preferable that breaches of conditions should be prosecuted under section 15 (2).

In a recent Revision matter I upheld the conviction of a policy holder, who having allowed his son, a provisionally licensed driver, to drive without supervision, pleaded guilty to an offence contrary to section 51, but set aside the order for disqualification and I have to consider whether I am bound by my previous decision. Even if the previous case cannot be distinguished I hold that I am not bound to follow the previous decision in the circumstances. Generally I would be so bound. But the point raised is novel and in the first case the matter was not argued in Court and the proposed order made in Chambers was sent to the Deputy Public Prosecutor who agreed with it: the result being that the order for disqualification was set aside.

In *Smith's* case (1), Baggallay L.J. considers the question of how far an appeal Court is bound by its previous decisions and says:—

> "the answer generally would certainly be that the Court as now constituted is bound by the previous decisions of the same Court. But I am far from saying that there are not exceptional circumstances under which the Court would not necessarily be so bound. I may mention, by way of illustration, a case in which a decision has been

very recent, and the circumstances connected with it shew that it was not very fully considered. Again, where doubts are entertained by one or more of the Judges who had taken part in such decision; and thirdly, though more rarely, where there is a concurrence of opinion, outside the members of the Court so constituted, to the effect that the decision was one which could not be supported..."

I think the above considerations apply to this case and I therefore quash the conviction and order the fine to be returned. The order of disqualification has already been set aside.

J. H. A. TROWELL v. P. P.

[App. Crim. Juris. (Horne, J.) April 30, 1941]

Evidence — Criminal Law — Corroboration of accomplice evidence — Position where judge is sitting without a jury.

The appellant was convicted in the Magistrate's Court at Batu Gajah of receiving illegal gratification in the course of his duty as Inspector of Machinery in the Mines Department. The evidence against the appellant was twofold (a) the oral evidence in Court of accomplices (b) certain entries in account books made by accomplices or their clerks.

Held, that the Magistrate had not fully appreciated the danger of convicting on the uncorroborated evidence of accomplices, that he had not distinguished between witnesses who were and those who were not accomplices, and that he had regarded matters as corroborative which were not corroborative in the legal meaning of that term. On all these grounds, the conviction must be quashed.

Cases referred to:—

(1) *R. v. Beebe* (1925) 19 Cr. App. Rep. 22.

(2) *R. v. Ambler* (1938) 2 W.W.R. 225.

(3) *R. v. Baskerville* (1916) 2 K.B. 658.

(4) *R. v. Charavanmuttu* (1930) 22 C.A.R. 1.

(5) *R. v. Koh Soon Poh* (1935) S.S.L.R. 30; (1935) 4 M.L.J. 120.

C. D. D. Hogan (*Lewis* with him) for appellant.

T. T. Russell, Deputy Public Prosecutor, for Public Prosecutor.

Horne, J.—It is beyond question that the appellant in the course of his duty as Inspector of Machinery attended at the mines referred to in each charge on the day alleged and that on each of those days he received a sum of money in cash. At the Mines Office it is clear that the statutory fee only was in each case paid in; while according to the account books a greater sum is paid out, and is booked to "the inspection" or "to inspection plus tea money". The entries themselves do not indicate the person who received the excess. The only evidence that the appellant received it is that of the person who alleges he paid it. But that person is in each case an abettor on his own confession and therefore an accomplice. The bank account is a joint account of appellant and his wife and as the evidence about it stood at the trial, it cannot even be said to establish more than the fact that money was paid in. The effective evidence on each charge is therefore the allegation by the giver of the alleged present supported by evidence of opportunity to give it; against which there is the denial on oath of the appellant. There is evidence of other partners, but the admissible part thereof shows them to be accomplices, and at the most is only a repetition of the entry in the account books.

The Magistrate, however, considered the evidence "overwhelming" and generally expresses himself throughout his Grounds of Judgment in such extravagant terms that I think he would not have convicted on the evidence of the Chinese witnesses which he describes as "so convincing and so obviously the truth" had he not been of opinion that they were corroborated. Unfortunately he does not state which witnesses he regarded as accomplices but lumps them all together, and it may be as Mr. Hogan now submits that he has used the evidence on the three charges as mutually corroborative. He was addressed by both Counsel at the conclusion of the evidence, but the strongest expression as to the danger of convicting I can find in his note of their addresses is that which appears in the address of the appellant's Counsel — "I stress the need for corroboration"; and the grounds of decision, adopting the same phrase, states — "I carefully directed my mind to the question of the need for corroboration". Can it be said that the Magistrate directed himself that it is always dangerous to convict on uncorroborated evidence (*Rex v. Beebe,*[1])? There are ample references in English and Indian reports as to the warning to be given by a Judge to a jury in this class of case but it is difficult to find an authoritative statement of the rule of practice which is virtually a rule of law (9 Hailsham 309) in reference to a tribunal consisting of a single person. There is one, however, in a Canadian case, a Court of Appeal decision, *Rex v. Ambler,*[2] and a summary of the judgment is in the English and Empire 1940 Digest Supplement, page 48, which is as follows:—

"In all cases wherein corroborative evidence of the description dealt with in Rex v. Baskerville, (1916) 2